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Right of peoples to self-determination

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Report of the Secretary-General

Summary

In its resolution 63/163, the General Assembly requested the Secretary-General to report to it at its sixty-fourth session on the question of the universal realization of the right of peoples to self-determination. The present report has been prepared in accordance with that request. It contains a summary of the developments relating to the consideration of this subject by the Human Rights Council and outlines the relevant jurisprudence of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights on the treaty-based human rights norms relating to the realization of the right of peoples to self-determination.

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I. Introduction

1. In its resolution 63/163 adopted on 18 December 2008, the General Assembly requested the Human Rights Council to continue to give special attention to the violation of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation, and requested the Secretary-General to report on this question to the Assembly at its sixty-fourth session. The present report was prepared pursuant to that request.

2. The report contains a summary of the developments relating to the consideration of this subject by the Human Rights Council at its ninth special session and at its ninth, tenth and eleventh regular sessions. It also outlines the recent concluding observations of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, based on their consideration of the periodic reports submitted by the States parties to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in respect of the implementation of the right to self-determination guaranteed in article 1 of the two Covenants.

II. Consideration of the question of the realization of the right of peoples to self-determination by the Human Rights Council

3. At the ninth session of the Human Rights Council, held from 8 to 24 September 2008, the Council considered the question of the realization of the right of peoples to self-determination under several items of its agenda. Under item 7, on the human rights situation in Palestine and other occupied Arab territories, the Council discussed the report of the high-level fact-finding mission on Beit Hanoun (A/HRC/9/26). In its conclusions, the mission considered that the rule of law had been one victim of the Beit Hanoun shelling, since there had been no accountability for the killings of civilians, and it stressed that accountability involved providing a remedy and redress for victims. The mission also reiterated that the process towards peace must operate within a framework of international law and be guided by respect for the Charter of the United Nations, international human rights law and international humanitarian law. While calling on Israel to honour its obligations to the people of Beit Hanoun, and more generally to the people of occupied Gaza and to respect, protect and fulfil their human rights, the mission recommended that the State of Israel pay the victims adequate compensation without delay and make reparation to the community of Beit Hanoun in the form of a memorial to the victims that would constitute a response to the needs of the survivors. Other possibilities for compensation included a health facility such as a physiotherapy clinic.

4. On 24 September 2008, the Council adopted resolution 9/18, entitled "Follow-up to resolution S-3/1: human rights violations emanating from Israeli military incursions in the Occupied Palestinian Territory and the shelling of Beit Hanoun", in which it called upon all parties concerned to ensure the full and immediate implementation of the recommendations contained in the report of the fact-finding mission. The Council also recommended that the General Assembly consider the report with the participation of the members of the mission and requested the

Secretary-General to report to the Council at its next session on the implementation of the mission's recommendations.

5. Within the context of its consideration of the question of human rights and unilateral coercive measures, the Council reaffirmed the right of all peoples to self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development (resolution 9/4, para. 5).

6. On 9 and 12 January 2009, the Human Rights Council held its ninth special session, which was devoted to the grave violations of human rights in the Occupied Palestinian Territory including the recent aggression in the occupied Gaza Strip, and adopted resolution S-9/1, in which it condemned all forms of violence against civilians, deplored the loss of human lives in the context of the prevailing situation and demanded the occupying Power, Israel, to immediately withdraw its military forces from the occupied Gaza Strip. The Council requested the United Nations High Commissioner for Human Rights to report on the violations of human rights of the Palestinian people by the occupying Power, Israel, by taking the following measures: (a) strengthening the field presence of the Office of the High Commissioner in the Occupied Palestinian Territory, particularly in the occupied Gaza Strip, and deploying the necessary personnel and expertise to monitor and document Israeli violations of the human rights of Palestinians and the destruction of their properties; and (b) submitting periodic reports to the Council on the implementation of the resolution (para. 11).

7. In addition, the Council requested all relevant special procedures mandate holders, in particular the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, to urgently seek and gather information on violations of the human rights of the Palestinian people and submit their reports to the Council at its following session (para. 12).

8. Moreover, the Council decided to dispatch an urgent, independent international fact-finding mission, to be appointed by the President of the Council, to investigate all violations of international human rights law and international humanitarian law by the occupying Power, Israel, against the Palestinian people throughout the Occupied Palestinian Territory, particularly in the occupied Gaza Strip, owing to the military aggression (para. 14).

9. Furthermore, the Council requested the Secretary-General to investigate the targeting of facilities of the United Nations Relief and Works Agency for Palestine Refugees in the Near East in Gaza, including schools, which had resulted in the killing of tens of Palestinian civilians, including women and children, and to submit a report to the General Assembly thereon (para. 16).

10. At its tenth session, held from 2 to 27 March 2009, the Council considered the follow-up to its resolutions 7/30, 9/18 and S-9/1 during the examination of the question of the human rights situation in Palestine and other occupied Arab territories under its agenda item 7. On 23 March 2009, the Deputy High Commissioner for Human Rights introduced the reports of the High Commissioner for Human Rights, the Office of the High Commissioner for Human Rights and the Secretary-General under the above-mentioned agenda item, as requested by the

Council in its resolutions 7/30[1] and 9/18[2] the report mandated by Commission on Human Rights resolution 2005/7[3] and the follow-up to Council resolution S-9/1.[4]

11. Subsequently, the Special Rapporteur on the right to food, Olivier De Schutter, introduced a combined report on behalf of nine special procedures mandate holders, as requested by Council resolution S-9/1 (A/HRC/10/22). Mr. De Schutter noted that, although the report focused on the effects of the large-scale Israeli military operation on the human rights of Palestinians, the general situation of human rights in Gaza had been serious for some 20 months prior to the escalation of the violence, in large part owing to the blockade imposed on Gaza. The combined report covered a range of recommendations including, inter alia, that all parties to the conflict cease all actions violating international human rights and humanitarian law. The report recommended, in particular, that the occupying Power should end the blockade on Gaza that had a negative impact on civilians. It also recommended that all parties establish accountability mechanisms providing for law-based, independent, impartial, transparent and accessible investigations of alleged breaches of international human rights and humanitarian law, including the violations of the principles of distinction, proportionality and precaution, and considered that a significant number of incidents had occurred in which the circumstances and the large number of civilians killed in a single attack raised prima facie concerns that the attacks had been carried out without respect for those principles.

12. Following the ensuing debates, the Council adopted resolution 10/21, entitled "Follow-up to Council resolution S-9/1 on the grave violations of human rights in the Occupied Palestinian Territory, particularly due to the recent Israeli military attacks against the occupied Gaza Strip", in which it requested the President of the Council to continue his tireless efforts to appoint the independent international fact-finding mission and demanded that the occupying Power, Israel, facilitate and provide unhindered access to the members of the independent international fact-finding mission.

13. With respect to the question of the realization of the right of the Palestinian people to self-determination, the Council adopted resolution 10/20, in which it reaffirmed the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and to establish their sovereign, independent, democratic and viable contiguous State (para. 1). It urged all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination and decided to continue the consideration of this question at its thirteenth session, in March 2010.

14. During the same session, under agenda item 3, the Council considered the report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination (A/HRC/10/14) and adopted resolution 10/11 on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.

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[1] A/HRC/10/15 and Add.1.

[2] A/HRC/10/27.

[3] A/HRC/10/35.

[4] See Council report A/HRC/10/29 (para. 726), adopted on 20 April 2009.

15. On 3 April 2009, the President of the Human Rights Council appointed Justice Richard Goldstone of South Africa, Christine Chinkin of the United Kingdom of Great Britain and Northern Ireland, Hina Jilani, Advocate of the Supreme Court of Pakistan, and Desmond Travers, a retired Colonel of the Irish Army, as members of the independent international fact-finding mission[5] that was mandated "to investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period of 27 December 2008 to 18 January 2009, whether before, during or after the operations". The mission started its work on 4 May 2009 and was still pursuing its mandate at the time of submission of the present report. It conducted on-site missions to gather first-hand information on matters relating to its mandate and held two sessions of public hearings in the Gaza Strip and another two sessions in Geneva with officials, experts, victims and witnesses. The mission will submit its report to the Council at its twelfth session, in September 2009.

16. On 16 June 2009, during its eleventh session (2-19 June 2009), the Human Rights Council held a general debate on agenda item 7, preceded by a statement by the President of the Council in relation to the fact-finding mission established in accordance with Council resolution S-9/1. The High Commissioner made a statement in which she appraised the human rights situation in Gaza and provided an update on the status of the periodic reports required by Council resolution S-9/1.

17. Within the context of its consideration of the question of the promotion of the right of peoples to peace (resolution 11/4), the Council once again reaffirmed the right of all peoples to self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development.

III. Concluding observations of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights

18. The principle of self-determination is enshrined in Article 1, paragraph 2, of the Charter of the United Nations. Article 1, paragraph 1, of the International Covenant on Civil and Political Rights and article 1, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights affirm the right of all peoples to self-determination. Article 1, paragraph 3, of the International Covenant on Civil and Political Rights and article 1, paragraph 3, of the International Covenant on Economic, Social and Cultural Rights impose upon States parties, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, the obligation to promote the realization of that right and respect it, in conformity with the provisions of the Charter.

19. During the reporting period, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights have addressed the right to self-determination in their consideration of States parties' periodic reports submitted respectively under article 40 of the International Covenant on Civil and Political Rights and articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights with a focus on paragraph 2, article 1, of the two Covenants, which

[5] Established under Council resolution S-9/1, para. 14.

affirms a particular aspect of the economic content of the right to self-determination, namely the right of peoples, for their own ends, to "freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit and international law. In no case may a people be deprived of its own means of subsistence". A summary of the relevant concluding observations is presented below.

A. Human Rights Committee

20. During the reporting period, the Human Rights Committee addressed several issues related to the right to self-determination in its concluding observations on Panama and Sweden with respect to indigenous peoples.

21. In its concluding observations on Panama, adopted in April 2008, the Committee expressed concern at the information included in the State party's report and received from non-governmental sources on the existence among the general population of racial prejudices against indigenous people and also on the many problems that affected indigenous communities, including serious shortcomings in health and education services; the lack of an institutional presence in their territories; the absence of a process of consultation to seek the prior, free and informed consent of communities to the exploitation of natural resources in their territories; the ill-treatment, threats and harassment to which members of the communities had reportedly been subjected on the occasion of protests against hydroelectric infrastructure construction projects, mining operations or tourism facilities on their territory; and the non-recognition of the special status of indigenous communities that were not within a *comarca* (articles 1, 26 and 27 of the Covenant).

22. The Committee recommended that the State party: (a) effectively guarantee the right to education of indigenous people and ensure that the education is appropriate to their specific needs; (b) ensure the access of all indigenous people to adequate health services; (c) carry out a process of consultation with the indigenous communities before granting licences for the economic exploitation of the lands in which they live and ensure that in no case shall such exploitation violate the rights recognized in the Covenant; and (d) recognize the rights of indigenous communities that live outside the *comarcas*, including the right to collective use of their ancestral lands (CCPR/C/PAN/CO/3, para. 21).

23. In its concluding observations on Sweden, adopted in April 2009, the Committee stated that, while noting that the State party had delegated some responsibilities for reindeer husbandry to the Sami Parliament, the Committee remained concerned at the limited extent to which the Sami Parliament might participate in the decision-making process on issues affecting land and traditional activities of the Sami people. Furthermore, while noting the State party's intention to address recommendations concerning Sami land and resource rights through a bill to be submitted to Parliament in March 2010, the Committee also noted the limited progress achieved so far in respecting Sami rights as well as the restrictive terms of reference of the Boundary Commission and other inquiries tasked with the study of Sami rights (articles 1, 25 and 27).

24. The Committee recommended that the State party take further steps to involve the Sami in the decisions concerning the natural environment and necessary means of subsistence for the Sami people. The State party should ensure the fair and expeditious resolution of claims concerning land and resources made by the Sami people, by introducing appropriate legislation in consultation with the Sami communities (CCPR/C/SWE/CO/6, para. 20).

B. Committee on Economic, Social and Cultural Rights

25. The Committee on Economic, Social and Cultural Rights addressed relevant aspects of the right to self-determination in its concluding observations on Australia, Bolivia (Plurinational State of), Brazil, Cambodia and Paraguay with respect to indigenous peoples.

26. In its concluding observations on Australia, adopted in May 2009, the Committee noted with concern that, despite the reforms to the native title system, the high cost, complexity and strict rules of evidence applying to claims under the Native Title Act, had a negative impact on the recognition and protection of the right of indigenous peoples to their ancestral lands.

27. The Committee recommended that the State party increase its efforts to improve the operation of the Native Title system, in consultation with Aboriginal and Torres Strait Islander peoples, and remove all obstacles to the realization of the right to land of indigenous peoples (E/C.12/AUS/CO/4, para. 32).

28. The Committee also noted with concern that, according to the National Indigenous Languages Survey, only about 145 of the original estimated 250 indigenous languages existed at that time in the State party, and most of them were critically endangered. The Committee was also concerned that, despite the national programmes, including the National Arts and Crafts Industry Support Program, indigenous cultural and intellectual property was not adequately protected in the State party.

29. The Committee recommended that the State party: (a) strengthen its efforts to guarantee the indigenous peoples' rights under articles 1 and 15 to enjoy their identity and culture, including through the preservation of their traditional languages; (b) consider improving the Maintenance of Indigenous Languages and Records Program; (c) preserve and promote bilingual education at schools; (d) reform the Copyright Act 1986 to extend its legal protection to indigenous people; and (e) develop a special intellectual property regime that protects the collective rights of indigenous peoples, including protection of their scientific products, traditional knowledge and medicine. The Committee also recommended that a registry of intellectual property rights of indigenous peoples be opened and that the State party ensure that the profits derived thereof benefited them directly (E/C.12/AUS/CO/4, para. 33).

30. In its concluding observations on the Plurinational State of Bolivia, adopted in May 2008, the Committee expressed concern that the right to land, in particular to ancestral lands, was not duly guaranteed to indigenous peoples. It noted with concern that nearly 70 per cent of all land was owned by only 7 per cent of the population. The Committee also noted with concern that the collective rights of indigenous peoples, in particular the right to receive the profits derived from the

products they created, including traditional medicine, were not duly protected in the Plurinational State of Bolivia (E/C.12/BOL/CO/2, paras. 23 and 24).

31. The Committee encouraged the State party to increase its efforts to speed up the demarcation of ancestral lands and territories and their return to the indigenous peoples. The Community Renewal Act, the National Plan for the Distribution of Government Lands and the National Human Settlements Plan should be made operational as soon as possible to ensure continued progress in the titling of indigenous lands. The Committee further recommended that the State party should develop a special intellectual property regime that would protect the collective rights of the indigenous peoples, including their scientific products and traditional knowledge and traditional medicine. To this end, the Committee recommended that a registry of intellectual property rights of indigenous peoples should be opened and that the State party should ensure that the profits derived therefrom benefited them directly (E/C.12/BOL/CO/2, paras. 36 and 37).

32. In its concluding observations on Brazil, adopted in May 2009, the Committee expressed concern about the slow progress in the land reform process, notwithstanding the Constitutional rights to property and self-determination, as well as the enactment of legislation to facilitate the demarcation of land belonging to the indigenous peoples, the State party's adoption of the United Nations Declaration on the Rights of Indigenous Peoples (2007) and its ratification of International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

33. The Committee recommended that the State party expeditiously complete the process of demarcation and allocation of indigenous land in accordance with the Constitution and existing laws (E/C.12/BRA/CO/2, para. 9).

34. In its concluding observations on Cambodia, adopted in May 2009, the Committee expressed deep concern about the most recent Food and Agriculture Organization of the United Nations global forest survey estimating that the State party had lost 29 per cent of its primary tropical forest cover over the previous five years, one of the most serious cases being the continuing destruction of the Prey Long forest in northern Cambodia. The Committee was also concerned about reports that the rapid increase in economic land concessions in the previous several years, even within the protected zones, was the major factor for the degradation of natural resources, adversely affecting the ecology and biodiversity, resulting in the displacement of indigenous peoples from their lands without just compensation and resettlement, and in the loss of livelihood for rural communities who depended on land and forest resources for their survival.

35. In its recommendations, the Committee urged the State party to review its policy regarding the conversion of protected zones into economic concessions by conducting environmental and social impact assessments including consultations with relevant stakeholders and communities with due regard to their right to participate in informed decisions that affected their lives. Moreover, the Committee strongly recommended that the granting of economic concessions take into account the need for sustainable development and for all Cambodians to share in the benefits of progress rather than for private gain alone. The Committee requested the State party to provide in its next periodic report, detailed information on the progress made in the implementation of these policies (E/C.12/KHM/CO/1, para. 15).

36. In its concluding observations on Paraguay, adopted in November 2007, the Committee regretted that most of its 1996 recommendations had not been fully implemented and that the State party had not addressed in a more effective manner the principal subjects of concern related to its initial report, which were still relevant, including the slow pace of agrarian reform. While noting that the Rural Welfare Institute had become the National Institute of Rural and Land Development, the Committee reiterated its concern about the situation of farmers and the indigenous population, who did not have access to their traditional and ancestral lands. The Committee noted with concern the concentration of land ownership in the hands of a very small proportion of the population and the fact that some 45 per cent of indigenous people did not hold legal title to their ancestral lands and were thus exposed to forced eviction (E/C.12/PRY/CO/3, paras. 12 and 18).

37. The Committee recommended that the State party increase its efforts to speed up the demarcation of ancestral lands and territories and their return to the indigenous peoples, following up the distribution of land to farmers with measures such as technical assistance, inputs, tools, microcredit, training and infrastructure, as well as irrigation and electricity systems. The State party must ensure that the budget allocated to agrarian reform was not diverted (E/C.12/PRY/CO/3, para. 23 (b)).

38. The Committee urged the State party to take the necessary measures, including legislative measures, to: (a) prevent the eviction of peasant and indigenous families who were occupying the land; and (b) address the claims made by peasant and indigenous families and ensure that they were not repressed. The Committee also urged the State party to take all the necessary measures to guarantee that indigenous people held legal title to their indigenous lands (E/C.12/PRY/CO/3, paras. 28 (a) and (b); and 29).